

OCT 29 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME HUGHES; MARY CORONADO;
AUDREY MILLS; VIRGINIA
CARDOZA; KAREN DELUCCHI;
JOLENE GIBSON; BARBARA
HEDRICK; SUZANNE HENNING;
WILL JOHNSON; LINDA MAGER;
MARIA MACIAS; CARL MORROW;
CANDICE PRICE; VIRGINIA RUIZ;
CARMEN SIMMONS; TREASA
TREDWELL; MARINA TORRES;
SHEILA WALL; LORIE WEISS; KATHI
LYNN CORONADO,

Plaintiffs - Appellants,

v.

CITY OF STOCKTON, CALIFORNIA,

Defendant - Appellee.

No. 05-16992

D.C. No. CV-03-00166-MCE

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Argued and Submitted October 18, 2007
San Francisco, California

Before: KLEINFELD and RAWLINSON, Circuit Judges, and RESTANI,** Judge.

The District court did not abuse its discretion. Expert testimony is admissible if it will “assist the trier of fact to understand the evidence or to determine a fact in issue.”¹ Cohen’s education and expertise sufficed so that it was not an abuse of discretion to allow the jury to have the benefit of his analysis.

The District court also did not abuse its discretion by a giving the challenged jury instruction. The formulation of the instruction was within the court’s discretion, and the law applied in the case was consistent with 149 Madison Avenue Corporation v. Asselta, 331 U.S. 199 (1947) and 29 C.F.R. § 778.309.

The jury’s verdict in favor of the City was supported by substantial evidence. Testimony from a City Administrator (Mr. Parrott), the Fire

** The Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

¹Federal Rule of Evidence 702.

Telecommunicators Union (Ms. Storm), Fire Telecommunicators (Ms. Hughes and Ms. Mager), and an expert (Mr. Cohen), together support the jury's verdict that the Fire Telecommunicators were paid for their overtime work under the Fair Labor Standards Act.

AFFIRMED.